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STATE CAPITOL
PHOENIX, ARIZONA

May 26, 1970

DEPARTMENT OF LAW OPINION NO. 70-13 (R-76)

REQUESTED BY: MILLARD HUMPHREY
Director
Department of Insurance

QUESTION: Does the Director of Insurance have jurisdiction over insurers which write workmen's compensation policies on risks located on or emanating from the various Indian reservations in the State of Arizona?

ANSWER: Yes.

It is our understanding that this question arose because some insurers, when submitting bids to various Indian tribes for workmen's compensation insurance coverage of Indian and non-Indian employees of the tribes on the reservations, were using rates set by the Washington, D. C. Workmen's Compensation Rating Organization instead of using the rates set by the Arizona Workmen's Compensation Rating Organization. It is further our understanding that the rates set by the Workmen's Compensation Rating Organization for the District of Columbia are based upon the statistics for that geographic area, and that they are not specifications for coverage coming from the Federal Bureau of Indian Affairs or any other federal agency.

Although Indian tribes are not within the mandatory provisions of the Arizona Workmen's Compensation Act, they may voluntarily contract for this coverage if they so desire. See Swatzell v. Industrial Commission, 78 Ariz. 149, 277 P.2d 244 (1954), which states at 153 and 154:

> "* * * Respondent's reply, with which we agree, is that in the exercise of powers granted by the legislature, the Commission may contract with employers who are not within the mandatory provisions of the Act, and that the contracts with

> the various Indian tribes were made in the exercise of this power, the tribes being authorized under Section 123a, Title 25, U.S.C.A., as amended August 2, 1946, 60 Stat. 852, to enter into contracts of insurance such as these and pay premiums thereon without an appropriation by Congress."

As a general rule, plenary authority over Indian affairs rests in the federal government to the exclusion of state governments, with two exceptions as follows:

> 1. Where Congress has expressly declared that certain powers over Indian affairs shall be exercised by the states; and
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> 2. Where the matter involves non-Indian questions sufficient to ground state jurisdiction.

With regard to this second exception, United States Department of Interior, Federal Indian Law 510 (1966), states:

> "In proceeding to analyze this latter exception to the general rule, we may note that in point of constitutional doctrine, the sovereignty of a State over its own territory is plenary and therefore the fact that Indians are involved in a situation, directly or indirectly, does not ipso facto terminate State power. State power is terminated only if the matter is one that falls within the constitutional scope of exclusive Federal authority." [Footnote omitted.]

A federal statute, rule, regulation or constitutional provision regulating Indians with regard to workmen's compensation or with regard to non-Indians who deal in and sell workmen's compensation insurance to Indians on reservations does not appear to exist.

In the absence of any federal statute, rule, regulation or constitutional provision with regard to this matter, it is necessary to consider Art. 20, Par. 4 of the Arizona Constitution, which reads as follows:

> "Fourth. The people inhabiting this State do agree and declare that they forever disclaim all right and title to the unappropriated and ungranted public lands lying within the boundaries thereof and to all lands lying within said boundaries owned or held by any Indian or Indian tribes, the right or title to which shall have been acquired through or from the United States or any prior sovereignty, and that, until the title of such Indian or Indian tribes shall have been extinguished, the same shall be, and remain, subject to the disposition and under the absolute jurisdiction and control of the Congress of the United States."

With regard to the above quoted passage from our Constitution, Chief Justice Alfred C. Lockwood, in the case of Porter v. Hall, 34 Ariz. 308, 271 P. 411 (1928), speaking for the Arizona Supreme Court, said at 321:

> "We have no hesitancy in holding, therefore, that all Indian reservations in Arizona are within the political and governmental, as well as geographical, boundaries of the state, and that the exception set forth in our Enabling Act applies to the Indian lands considered as property, and not as a territorial area withdrawn from the sovereignty of the state of Arizona. . . ."

Although Porter v. Hall, supra, was overruled in Harrison v. Laveen, 67 Ariz. 337, 196 P.2d 456 (1948), the above quoted holding was not affected, because Harrison v. Laveen does not conflict therewith.

The United States Supreme Court in Warren Trading Post Co. v. Arizona Tax Commission, 380 U.S. 685, 85 S.Ct. 1242, 14 L.Ed.2d 165 (1965), held that Arizona could not tax a federally licensed Indian trader with respect to sales made to reservation Indians on the reservation. As indicated in 14 L.Ed.2d 169, n. 18, the decision was based on the principle that Congress, in exercising its power granted in Article I, § 8, of the Constitution of the United States has undertaken to regulate Indian reservation trading and, therefore, there is no room for states to legislate on the subject. This footnote states as follows:

> ". . . Moreover, we hold that Indian traders trading on a reservation with reservation Indians are immune from a state tax like Arizona's, not simply because those activities take place on a reservation, but rather because Congress in the exercise of its power granted in Art I, § 8, has undertaken to regulate reservation trading in such a comprehensive way that there is no room for the States to legislate on the subject. . . ."

It is submitted that the Warren Trading Post case, supra, dispels the common belief that merely because a transaction takes place on an Indian reservation, all jurisdiction and control is excluded from the state. The Arizona Supreme Court spoke of this question in Industrial Uranium Co. v. State Tax Commission, 95 Ariz. 130, 387 P.2d 1013 (1963), at 132:

> "That the business activity occurred within the boundaries of the Indian reservation does not remove the transaction from Arizona's jurisdiction. [Citations omitted.] State laws apply on reservations unless such application would interfere with reservation self-government or impair a right granted or reserved by federal law. [Citation omitted.]"

Department of Law Letter Opinion 61-2-L (December 5, 1960) stated that it was necessary for contractors to obtain Arizona Contractor's licenses when the work to be performed is on an Indian reservation and for a tribal council. This opinion was based upon dicta stated in Surplus Trading Co. v. Cook, 281 U.S. 647, 50 S.Ct. 455, 74 L.Ed. 1091 (1930), at 50 S.Ct. 456, as follows:

> "It is not unusual for the United States to own within a state lands which are set apart and used for public purposes. Such ownership and use without more do not withdraw the lands from the jurisdiction of the state. On the contrary, the lands remain part of her territory and within the operation of her laws, save that the latter cannot affect the title of the United States or embarrassit in using the lands or interfere with its right of disposal.
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> "A typical illustration is found in the usual Indian reservation set apart within a state as a place where the United States may care for its Indian wards and lead them into habits and ways of civilized life. Such reservations are part of the state within which they lie, and her laws, civil and criminal, have the same force therein as elsewhere within her limits, save that they can have only restricted application to the Indian wards. . . ."

The opinion then quotes from Williams v. Lee, 358 U.S. 217, 79 S.Ct. 269, 3 L.Ed.2d 251 (1959), at 3 L.Ed.2d 254, which states:

> ". . . Essentially, absent governing Acts of Congress, the question has always been whether the state action infringed on the right of reservation Indians to make their own laws and be ruled by them. [Citation omitted.]"

The opinion reasons that requiring a contractor to obtain an Arizona license before being permitted to perform work on an Indian reservation for an Indian tribe is not an interference with, or a restriction being placed on, the federal government or Indian tribes as to the use of their land, but merely a restriction placed upon the contractor for the benefit of those who use his services.

We submit that the reasoning in Department of Law Letter Opinion 61-2-L is the correct interpretation, and is more fitting to the instant situation, because of tribal contact with non-Indians and the strong Arizona public policy regarding workmen's compensation. Although the insurers are selling to Indian tribes on Indian reservations, the tribes employ non-Indians as well as Indians. The rights and privileges of these non-Indian employees is materially affected by the terms and conditions of the workmen's compensation insurance coverage which their employers, the tribes, have obtained. Arizona's public policy with regard to regulating insurance companies for the protection of the public and policyholders is well stated in Truck Insurance Exchange v. Hale, 95 Ariz. 76, 386 P.2d 846 (1963), at 81:

> "By 1954 the Arizona legislature enacted all the regulatory statutes 'in the public interest' and 'for the welfare of the policyholders' sanctioned by 15 U.S.C.A. § 1011 et seq. This statute, A.R.S. Title 20, is remedial only as to the regulation of insurance in the public interest. It will be strictly construed in favor of the rights of the policyholders and the public. . . ."

Department of Law Opinion 54-146 (October 6, 1954) stated that the State of Arizona had authority to regulate the speed on state highways on reservations with reference to non-Indians. This opinion was based in part upon the case of Pacific Greyhound Lines v. Sun Valley Bus Lines, Inc., 70 Ariz. 65, 216 P.2d 404 (1950), which held that a common carrier could not operate from North Sacaton Junction through Sacaton to Casa Grande Junction and back to South Sacaton Junction without a certificate of convenience and necessity. The court said at 76:

". . . It seeks to justify these operations by; (1) asserting that the roads in question are all on the Sacaton Indian Reservation and that inasmuch as there is no evidence in the record that the Secretary of the Interior ever granted permission to the State or County to construct such highways the corporation commission has no jurisdiction over same, (In other words, defendant is saying that it is no affair of the state if the defendant wants to operate over this highway.); (2) its claim that they have been operating under a permit from the tribal chief for which a fee of $25 per year is paid. In answer to the first contention we are entitled to presume that the State and County highway officials did their duty in procuring the necessary consent for the construction of these highways before spending public moneys thereon. The defendant as a common carrier being under the jurisdiction of the Commission may not operate as such carrier within the state without having a permit covering each specific operation conducted by it, Section 66-506, A.C.A. 1939, and the carrier may not deviate from the route prescribed. As more than a fourth of the state's area lies on Indian Reservations there is not a through road of any consequence in the state that does not cross one or more of such reservations. If defendant's contention were upheld our laws regulating common carriers would be wholly ineffective if not a nullity. The tribal chiefs (if any there be) have no more authority over common carriers than any other private citizen. . . ."

Although in the instant case we are not dealing with state highways and common carriers, nevertheless it is submitted that the rationale of Pacific Greyhound Lines, supra, is applicable to insurers and, therefore, Arizona has jurisdiction to regulate the conditions and prescribe the requirements under which insurers may sell insurance anywhere within the territory of the State of Arizona.

It is our opinion that Arizona can compel insurers which sell workmen's compensation insurance to Indian tribes to comply with Arizona laws and regulations (a) because such action does not interfere with or impair the self-government of Indians or rights federally granted to them; (b) because there is sufficient contact with non-Indians to warrant state jurisdiction and (c) because of the strong public policy of Arizona to regulate the transaction of insurance within the state, and especially the transaction of workmen's compensation insurance.

Respectfully submitted,

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